

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rural LECs)	
)	CC Docket No. 94-129
Petition for Declaratory Ruling with Respect to)	CG Docket No. 02-278
Obligation of Local Exchange Carriers to)	
Execute Primary Interexchange Carrier Change)	
Requests with Incorrect Subscriber Information)	

MOTION FOR EXTENSION OF TIME TO FILE REPLY

The Rural LECs, by counsel, hereby request an extension of the time until February 23, 2006, or 10 days after any extension of the comment period, to file Reply Comments to any Comments filed in opposition to their Application for Review.¹ The presently scheduled time for filing replies is February 16, three days after the time for filing comments.² Good cause for grant of this motion is set forth below.

I BACKGROUND

On February 1, 2005, the Rural LECs filed a Petition for Declaratory Ruling in this Docket that the Commission's rules permit a local exchange carrier ("LEC")

¹ Section 1.115(d) of the Commission's Rules governing Applications for Review speaks in terms of Oppositions and Replies to Oppositions, rather than Comments. This Petition will generally use the term comments for consistency with the Public Notice and Federal Register notice; however, Opposition and Reply to Opposition are the more precise terms.

² 71 Fed. Reg. 5338, Feb. 1, 2006.

to reject a request to change a subscriber's preferred long distance carrier when the name or telephone number on the request are not that of the subscriber or person explicitly authorized by the subscriber to make such changes.

The Petition was denied by the Acting Chief, Consumer and Governmental Affairs Bureau ("CGB") on June 9, 2005, without taking public comment.³ On July 8, 2005 the Rural LECs filed an Application for Review, pursuant to Section 1.115. On December 2, 2005, the CGB released a Public Notice seeking comment on the Application for Review, establishing comment and reply dates 10 and 15 days after Federal Register Publication, respectively.⁴ Because the 10th day after publication is a holiday, the comment period was moved forward to the next business day, however no adjustment was made in the reply date.

II JUSTIFICATION FOR EXTENSION

A. The Original Reply Comment Period Was Unreasonably Short and Inconsistent with the Commission's Rules.

The five days for filing reply comments originally established by the CGB was unreasonably short, and in practice even that amount of time is not available. Because there is often a delay of 24-48 hours after the expiration of a filing period before all electronically filed comments are posted on the Commission's website, the time period established by the public notice would, in practice, allow closer to half

³ *Implementation of the Subscriber Carrier Selection Changes Provision of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumer's Long Distance Carriers, LEC Coalition Request for Declaratory Ruling Regarding Carrier Change Verifications*, CC Docket 94-129, Declaratory Ruling, 20 FCC Rcd 10599 (2005)

⁴ DA 05-3131

that time to review comments and prepare a reply. Comments filed and served by mail may take much longer to be received, and may not even be available until after the reply period has closed.⁵

The Rural LECs understand that there are instances where extremely quick comment and reply turnaround may be appropriate, but this is not one of them. The Application for Review was filed July 8, 2005 and has been available for interested parties to study on the Commission's website since shortly after that time. The CGB then took almost five months to prepare a two page Public Notice which includes two substantive paragraphs. Parties not aware of the Application for Review before the Public Notice will still have had over two months to prepare their comments. It is thus unreasonable to provide the Rural LECs with only a couple of days to reply. Because the CGB never requested comments on the original Petition, the Rural LECs have no prior information as to the possible nature of oppositions to their Application for Review.

The CGB December 2, 2005 Public Notice setting time the time for filing comments and replies refers to Sections 1.415 and 1.419 which govern the submission of comments filed in response to a notice of proposed rulemaking. Even if Section 1.415 were applicable, it provides that the time for filing reply comments will be reasonable. Five days is not reasonable in this context for the reasons stated

⁵ The particular time period involved in this case exacerbates the mail delay problem because counsel to the Rural LECS relocated January 1, 2006, so that there is an additional delay for forwarding. Counsel cannot predict what entities

above. The Public Notice's reference to Section 1.415 appears, however, to be in error. Replies to Applications for Review are governed by Section 1.115. That section provides 10 days to file replies.⁶ The 10 day reply period is measured after the opposition is filed, not from Federal Register publication as was the five day period established in the Public Notice.⁷

B. The Timing of Federal Register Publication Exacerbated The Unreasonable Shortness of the Reply Period

The comment and reply dates established in the Federal Register apparently applied the normal rules for extending the time for comment to the next business day when the calculated day falls on a holiday.⁸ However, because the reply date was also set to be measured from Federal Register publication, rather than from the actual comment date, the effect of extending the comment period by two days was to shorten the reply date by the same amount. Thus the already unreasonable five days became an absurdly brief three day reply period. If the Bureau had applied the correct Commission rule and set the reply period at 10 days after the comment (opposition) filing, the extension of the comment round would not have shortened the reply period.

III CONCLUSION

The Rural LECs have shown good cause why the period for filing a reply to

may file comments and thus advise of his new address.

⁶ 47 C.F.R. 1.115(d)

⁷ By establishing the five day reply period as a 15 days after Federal Register publication, or a net five days, the Public Notice deprived the Rural LECs of the use of Sections 1.4(g) and (j).

any comments on their Application for Review should be extended to provide them with 10 days after the filing of comments. The Commission's rules, which the CGB's Public Notice did not follow, contemplate such a time period. Even if the CGB has authority to establish a shorter time, the five days it established is both unreasonable and in violation of the rule it relied upon. That unreasonable period was further exacerbated by the timing of the Federal Register Publication which reduced the reply time to three days, which in practice means the Rural LECs will have at best perhaps 36-48 hours from the time the comments are actually received.

This result is unreasonable in almost any situation and particularly so where there is no urgency. To the extent the public interest would have been served by faster action the delay is attributable to the five months the CGB took to issue the Public Notice and the additional two months before Federal Register publication. There is no rational basis to deprive the Rural LECs of their right to a reasonable time to review and reply to comments that may be filed in opposition to their Application for Review.

Respectfully Submitted

The Rural LECs

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February 4, 2006

APPENDIX

THE RURAL LECS

3 Rivers Telephone Cooperative, Inc.
Armstrong Telephone Company Maryland
Armstrong Telephone Company New York
Armstrong Telephone Company North
Armstrong Telephone Company Northern Division
Armstrong Telephone Company Pennsylvania
Armstrong Telephone Company West Virginia
Bruce Telephone Company
Cascade Utilities
Central Montana Telephone Company
Chibardun Telephone Cooperative, Inc.
Chickasaw Telephone Company
Citizens Telephone Company of Higginsville
Clay County Rural Telephone Cooperative
Concord Telephone Company
CTC Telcom, Inc.
Darien Telephone Company
DTC Communications
Egyptian Telephone Cooperative
Hardy Telephone Company
Lackawaxen Telecommunications Services, Inc.
Lockhart Telephone Co.
Loretto Telephone Company
Mid-Century Telephone Company

Nicholville Telephone Company, Inc.
North Central Telephone Cooperative, Inc.
North East Nebraska Telephone Company
North-Eastern Pennsylvania Telephone Company
Peoples Telephone Company
Poka Lambro Telephone Cooperative
Public Service Telephone Company
Siskiyou Telephone Company
Smart CityTelecom
Triangle Telephone Cooperative Association
Volcano Telephone Company
Washington County Rural Telephone Cooperative